



ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

2011 JUN 27 PM 1:34

CLERK OF COURT

MICHAEL C. KING, JR., ET AL.,

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Plaintiffs,

§

vs.

§

**NO. 4:10-CV-757-A
JURY TRIAL**

ENERGIZER HOLDINGS, INC.,

§

Defendant.

§

**DEFENDANT ENERGIZER HOLDINGS, INC.'S
EXPERT DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant, Energizer Holdings, Inc. ("Energizer"), and pursuant to Federal Rule of Civil Procedure 26(a)(2), the Court's Scheduling Order, and Agreements, discloses the identity of the witnesses whom it may use at trial to provide expert opinion testimony under Federal Rules of Evidence 702, 703, or 705:

I. RETAINED EXPERT

The following is Defendant's retained expert who may testify about all the information that is contained in his report, CV and file.

Dr. Way Johnston
C.S.P, Ph.D.
34 Lazy Lane
The Woodlands, TX 77380
(281) 363-3405

Dr. Johnston is an expert in safety and human factors. Dr. Johnston is expected to opine regarding the warnings and safety instructions provided by Energizer with their 2025 lithium coin cell battery, the relevant capabilities of young children, the likelihood of Michael C. King,

III's ability to open the baby bottle bank and original battery packaging as described by Michael C. King, Jr. and Diana King, and the quality of supervision provided by Michael C. King, Jr. and Diana King, as well as related topics. It is anticipated that Dr. Johnston will testify in conformity with his written report. Dr. Johnston may also respond to opinions expressed by other experts in this case. His mental impressions and opinions are incorporated in his expert report, which, along with his CV, prior testimony list and fee schedule, have been served upon plaintiff.

II. NON-RETAINED EXPERTS

A. The following persons are employed by Defendant and are hereby designated as testifying experts by Defendant as they have specialized knowledge, training or expertise, which qualifies them as experts. Accordingly, Defendant may solicit expert opinion testimony from the following persons as they possess the necessary knowledge, skill, experience, training, and/or education to render expert opinions under Federal Rules of Evidence 702, 703, or 705.

Marcus K. Boolish, Technology Manager
 BS, Chemical Engineering
 Energizer Holdings, Inc.
 25225 Detroit Rd.
 Westlake, OH 44145
 (800) 383-7823

Mr. Boolish is employed by Energizer Holdings, Inc. as Technology Manager and in addition to fact based testimony that relates to the areas in which he was designated, he may provide expert testimony regarding Energizer 2025 lithium coin cell battery safety and performance, 2025 lithium coin cell chemistry, mechanism of plaintiff's injury, causation, Energizer's knowledge of ingestion hazard and response, state-of-the-art of the 2025 lithium coin cell and its packaging, and research regarding alternate designs for the 2025 lithium coin cell battery and its packaging, as well as the feasibility of proposed alternative designs. He is further expected to testify regarding Energizer's internal testing of lithium coin cell batteries, the drafting and adequacy of Energizer's warning copy, the contents of Energizer's material safety datasheets, and ANSI, IEC and UL standards development and compliance, as well as Energizer's scientific research and support of research and education conducted by the National Capitol Poison Center and Dr. Toby Litovitz.

Mr. Boolish is expected to opine that Energizer is the leader in safety within the industry, that plaintiff's injury was not likely caused by 2025 lithium coin cell battery leakage and that Energizer complies with and exceeds applicable safety standards regarding the 2025 lithium coin cell battery. Mr. Boolish may further opine regarding the state-of-the-art of the 2025 lithium coin cell battery, its packaging, as well as alternative design research and the feasibility of proposed alternative designs. Additionally, Mr. Boolish may opine regarding testing and results

of plastic and metal container corrosion analyses. Mr. Boolish may also respond to opinions expressed by other experts in this case. Any testimony or evidence Mr. Boolish may offer will be based on his education and work experience including his knowledge of Energizer's products, policies, procedures and guidelines and his review of documents that have been produced in this matter. Mr. Boolish's duties do not regularly involve giving expert testimony, and a written report from him is not required by Fed. R. Civ. P. 26(a)(2)(C).

Philip Cooper, Quality Assurance Manager
BES, Chemical Engineering
Energizer Holdings, Inc.
25225 Detroit Rd.
Westlake, OH 44145
(800) 383-7823

Mr. Cooper is employed by Energizer Holdings, Inc. as Quality Assurance Manager and in addition to fact based testimony that relates to the areas in which he was designated, it is anticipated he will provide expert testimony regarding suppliers of 2025 lithium coin cell batteries purchased by Energizer, Energizer's qualification standards for 2025 lithium coin cell battery suppliers, and Energizer's testing requirements for 2025 lithium coin cell batteries by its suppliers. It is expected that he will further testify regarding ANSI, IEC, and Energizer 2025 lithium coin cell battery testing protocols, electrical characteristics, leakage resistance, the make-up of 2025 lithium coin cell battery containers, the approval and introduction dates of the Energizer two battery 2025 lithium coin cell battery package, the possibility of leakage of 2025 lithium coin cell batteries, and research regarding alternate designs for the 2025 lithium coin cell battery and its packaging, as well as the feasibility of proposed alternative designs. Additionally, Mr. Cooper is expected to testify regarding the 2025 lithium coin cell packaging and its manufacturing process, 2025 lithium coin cell package testing and testing under abusive conditions, 2025 lithium coin cell battery chemistry and internal contents of 2025 lithium coin cell batteries, as well as final assembly.

Mr. Cooper is expected to opine that based on data from Energizer's testing program, 2025 lithium coin cell batteries have a very low risk of leakage and based on data from Energizer's testing of its competition, the leakage rate of Energizer 20mm size batteries are among the lowest of all brands tested. Mr. Cooper may further opine that Energizer's package testing program ensures that the product remains contained under abusive handling during shipping. Additionally, Mr. Cooper may opine that Michael C. King, III could not have opened an Energizer 2025 lithium coin cell two battery package on January 29, 2003 because this packaging was not available in the market. Mr. Cooper may further opine regarding the state-of-the-art of the 2025 coin cell battery, its packaging, as well as alternative design research and the feasibility of proposed alternative designs. Mr. Cooper may also respond to opinions expressed by other experts in this case. Any testimony or evidence Mr. Cooper may offer will be based on his education and work experience including his knowledge of Energizer's products, policies, procedures and guidelines and his review of documents that have been produced in this matter. Mr. Cooper's duties do not regularly involve giving expert testimony, and a written report from him is not required by Fed. R. Civ. P. 26(a)(2)(C).

Michael H. Babiak, Director of Technology
BS, Chemical Engineering
Energizer Holdings, Inc.
25225 Detroit Rd.
Westlake, OH 44145
(800) 383-7823

Mr. Babiak is employed by Energizer Holdings, Inc. as Director of Technology and in addition to fact based testimony that relates to the areas in which he was designated, he may provide expert testimony regarding Energizer's corporate history, Energizer 2025 lithium coin cell battery safety and performance, 2025 lithium coin cell chemistry, mechanism of plaintiff's injury, causation, Energizer's knowledge of ingestion hazard and response, state-of-the-art of the 2025 lithium coin cell and its packaging, and research regarding alternate designs for the 2025 lithium coin cell battery and its packaging, as well as the feasibility of proposed alternative designs. He is further expected to testify regarding Energizer's internal testing of lithium coin cell batteries, the drafting and adequacy of Energizer's warning copy, the contents of Energizer's material safety datasheets, and ANSI, IEC and UL standards development and compliance, as well as Energizer's scientific research and support of research and education conducted by the National Capitol Poison Center and Dr. Toby Litovitz.

Mr. Babiak is expected to opine that Energizer is the leader in safety within the industry, that plaintiff's injury was not likely caused by 2025 lithium coin cell battery leakage and that Energizer complies with and exceeds applicable safety standards regarding the 2025 lithium coin cell battery. Mr. Babiak may further opine regarding the state-of-the-art of the 2025 lithium coin cell battery, its packaging, as well as alternative design research and the feasibility of proposed alternative designs. Additionally, Mr. Babiak may opine regarding testing and results of plastic and metal container corrosion analyses. Mr. Babiak may also respond to opinions expressed by other experts in this case. Any testimony or evidence Mr. Babiak may offer will be based on his education and work experience including his knowledge of Energizer's products, policies, procedures and guidelines and his review of documents that have been produced in this matter. Mr. Babiak's duties do not regularly involve giving expert testimony, and a written report from him is not required by Fed. R. Civ. P. 26(a)(2)(C).

Additionally, Energizer may use one or more of its employees who have been identified in its Disclosures or discovery responses or who have been designated as corporate representative witnesses to provide expert testimony should such testimony be necessary to rebut any opinions or claims made by Plaintiffs or their expert witnesses. None of these employees' job duties regularly involve giving expert testimony. Energizer has not yet determined what employee testimony, if any, it will use at trial to present rebuttal evidence under Federal Rule of Evidence 702, 703, or 705.

B. The following persons, or the custodians of their records, have not been retained by and are not employed by, or are otherwise subject to the control of Defendant (hereinafter referred to as "non-retained" experts), but are hereby designated as testifying experts by Defendant.

Although these witnesses have not been specifically retained as expert witnesses by Defendant at this time, and while Defendant cannot vouch for the expertise or credibility of such witnesses at this time, it is believed that they may have knowledge, training or expertise which may qualify them as experts. Accordingly, Defendant may solicit expert opinion testimony from the following persons as they may possess the necessary knowledge, skill, experience, training, and/or education to render expert opinions under Federal Rules of Evidence 702, 703, or 705.

Harris Methodist Southwest, Emergency Department
6100 Harris Parkway
Fort Worth, Texas 76132
(817) 433-5000

Dr. Hall, Emergency Room Physician
Dr. David Diffley, Radiologist

Cook Children's Health Care System
801 7th Avenue
Fort Worth, Texas 76104
(682) 885-4000

Dr. Linda O. Henry, Emergency Room Physician
Dr. Kerry K. Yancy, Emergency Room Physician
Dr. Warren Brasher, Emergency Room Physician
Dr. Kim A. Iglesia, Radiologist
Dr. Daniel G. Oshman, Radiologist
Dr. Gabriela I. Garcia-Thomas, Radiologist
Dr. B. Burton Putegnat, Radiologist
Dr. C. Keith Hayden, Radiologist
Dr. Jose L. Iglesias, Pediatric Surgeon
Dr. W. Glaze Vaughn, Hospital Physician
Dr. James P. Miller, Pediatric Surgeon
Dr. J. Michael Badgwell, Anesthesiologist
Dr. James D. Marshall, Pediatric ICU Physician
Dr. Susan Davis, Pediatric ICU Physician

Dr. Rey de la Rosa, Pediatric ICU Physician
Dr. J. Hudson Allender, Pediatric ICU Physician
Dr. Roberto Caballero, Pediatric ICU Physician

The above physicians, surgeons, health care providers, health care facilities, hospitals and clinics who have seen, treated or examined or been consulted regarding Michael C. King, III, and have knowledge of the medical care administered to Michael C. King, III. Said persons may provide expert/fact witness testimony regarding Michael C. King, III's medical condition(s). Their opinions are set forth in Michael C. King III's medical records and/or their reports.

Dr. William B. Scroggie, Pediatrician
1108 South Henderson Street
Forth Worth, Texas 76104
(817) 335-3255

Dr. William B. Scroggie has knowledge of the medical care administered, and ongoing, to Michael C. King, III.

III. EXPERTS RETAINED AND/OR DESIGNATED BY OTHER PARTIES

Defendant also hereby identifies all "experts" that have been identified by Plaintiffs in their Disclosure and/or expert designations and/or expert reports served in this cause (including any and all supplements and amendments thereto.)

Respectfully submitted,

By: 
Jason W. Fatheree
State Bar No. 24027162
S. Wesley Butler
State Bar No. 24045593

CROUCH & RAMEY, L.L.P.
2001 Ross Avenue, Suite 4400
Dallas, Texas 75201
Tel. (214) 922-7100
Fax (214) 922-7101

**ATTORNEYS FOR DEFENDANT
ENERGIZER HOLDINGS, INC.**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served via certified mail, return receipt requested on counsel of record for Plaintiffs on this the 27th day of June 2011.

Scott W. Wert
Foster & Sear, LLP
817 Greenview Drive
Grand Prairie, TX 75050

S. Reed Morgan
Law Offices of S. Reed Morgan, P.C.
413 Eighth Street
Comfort, TX 78013



Jason W. Fatheree